

ZONING BOARD OF APPEALS
MEETING MINUTES
December 11, 2012
4:00 P.M.

CALL TO ORDER: Mr. John Stetler, Chairperson called meeting to order at 4:00 P.M.

ATTENDANCE:

Members Present:

Rick Barnes	James Moreno
Deland Davis	Carlyle Sims
Greg Dunn	Becky Squires
Sharon Heisler	John Stetler

Staff Present:

Jill Steele, Deputy City Attorney
Marcel Stoetzel, City Attorney Ofc.
Glenn Perian, Senior Planner
Leona Parrish, Admin. Assistant, Planning Dept.

ADDITIONS OR DELETIONS TO THE AGENDA: None

CORRESPONDANCE: Information shared of new appointments to the zoning board: (Rick Barnes, was appointed from alternate to regular member and Sharon Heisler, as new alternate member).

OLD BUSINESS:

A) **Appeal the Decision of the Zoning Administrator (439 W. Columbia Ave.)** Appeal from Mr. Richard Christian, R.B. Christian & Sons Inc. requesting to appeal the decision of the zoning administrator in order to allow a two-unit residential use in a "C-3 Intensive Business District" zone for property located at 439 W. Columbia Ave.

Mr. John Stetler, Chairperson stated because there are board members here today that were not at last month's meeting he would be repeating the public hearing for the benefit of those that were not present at last month's meeting. He stated he will ask for a staff report to be read and then open the public hearing. At the public hearing persons may come forward and state their name and address for the record as it is being recorded and then speak either for or against an appeal. The public hearing will then be closed and the zoning board will discuss and make a decision and if denied they may appeal to the Circuit Court.

Mr. Glenn Perian, Senior Planner, stated this case involves the decision of the Zoning Administrator as it relates to property at 439 W. Columbia Ave. for residential purposes. Stated it is the decision of the City of Battle Creek that the property can be used consistent with those uses permitted in the "C-3 Intensive Business" zoning districts and that the residential uses previously permitted have lost their legal nonconforming status. Said in August of this year a rental permit application was solicited for the subject property by the Code Compliance Department and as a result a zoning review was done by the Planning and Zoning Department to see if residential uses would be permitted at the subject location. Based on information found in city files it was determined that the building was constructed in 1930 as a residence and the township zoning maps show that in 1950 the property was zoned "C" Commercial

which allowed residential uses. From 1958-1984 the property was zoned "B-2" Intensive Business District as part of the old Battle Creek Township. Residential uses were not permitted in the "B-2" district. In 1984 when the township and city merged, the property was zoned "C-3" Intensive Business District, as it is today, and residential uses are not permitted. A card from the Assessing Office showed that sometime in the 90's that the entire building was being used as an office. There are no permits on file indicating the property was converted back to residential units legally since the 90's. Based on this evidence it is the determination of the Zoning Administrator that the property can only be used in conformance with the "C-3" zoning district.

Mr. Perian said it is the responsibility of the Zoning Board to determine if the evidence supplied by the city supports the position that the property lost its residential nonconforming status and can only be used in compliance with those uses permitted in the "C-3" zoning district or if the evidence supplied by Mr. Christian supports his position that the property can legally be used as a mixed use property including two residential units and an office. Noted that since the meeting last month the city has not received any additional information from Mr. Christian and that Mr. Farmer, Zoning Officer, was present today to answer any questions the board might have related to the zoning review.

Mr. Richard Christian, 439 W. Columbia Ave., came forward to speak; stating he was here today to contest the City's decision and that it had been a rental since 1950's without ever being vacant; noted he had several affidavits from persons who have lived there that support his statements. Said the building can be looked at by contractors and see that the reconstruction of apartments had been done some time ago. Stated he bought it in 1971 and is the same as it was since then and have rented the apartments for over 40 years. Mr. Christian provided the following documents to the zoning board: A Special Assessment Installment bill from the City of Battle Creek; (4) Signed "Sworn Statements" from himself, David Colles, Linda Robbins, and Jack Coleman stating they have rented or received rental payments regarding said property.

Mr. James Moreno made reference to last month's meeting minutes where it was stated the property had never been registered as a rental property. Mr. Christian said no it had not been registered, that the property used to be in the Battle Creek Township and when they merged with the City of Battle Creek, he was never asked by anyone to register them. Stated he received a letter this past Spring to register them and this is how this began.

Mr. Greg Dunn asked Mr. Christian if he had made available any of the documents he just handed-out to the City of Battle Creek. Mr. Christian stated no, he did not know he was to bring them at a different time.

Mr. Dunn asked for the record if the address he provided of 439 W. Columbia was where he resided. Mr. Christian stated no, that was his office location and that he resides at 52 E. Acacia Blvd.

Mr. Christian said he did not understand where it had been determined that this property had been a commercial property and not a rental when it has been rented for over 50 years as apartments. Said he has rented it since he purchased in the 1970's; with their office being next door he remembers it being lived in since the 1950's.

Mr. Greg Dunn noted that Mr. Christian stated at the last meeting that he did not believe that the city should ask him to register these apartments. Mr. Christian said he did not understand that when the city

annexed the township somehow a letter should have went to everyone and noted that the township never asked them to be registered.

Mr. Dunn stated there had been a lot of publicity and news articles in the newspaper quite often of the rental ordinance and changes made; asked if Mr. Christian had seen any of the articles. Mr. Christian said yes he sure had seen them and that in the past his father before he pasted years ago had handled the rentals and later he had decided to go to the city and register them.

Mr. Dunn stated the reasoning for registering of rental properties was not to just collect revenue for the city, but to let others know what type of property it is in case of a fire for instance; they would need to know of persons could be trapped inside and need rescued. Mr. Dunn said that it makes a difficult situation because of never registering the rental units in the past.

Mr. Christian said he understood that and could not offer a reason why they were never registered; but believe it would be a grandfathered use as a rental property and asked if when Battle Creek Township was annexed by the City of Battle Creek; wouldn't the City of Battle Creek also allow the rentals. Mr. Dunn stated he is good reasons for zoning and sure there are other old Battle Creek Township properties that were registered rentals and are still now approved rentals.

Mr. Stetler said he did not believe that Battle Creek Township ever inspected rental properties.

Mr. Carlyle Sims said he is aware they have been there for years and the problem he has is with them not being ever being registered as it has been mandatory by the city for a good many years.

Ms. Jill Steele stated when the property was built, it was built as a single-family residential property and not sure if it was ever legally changed to a two-unit; also the issue of the records showing it being used for a commercial business for a period of years as an office. She does not believe it was ever legally used as a two-unit and asked the board to explore those issues and also when a property is annexed it is a whole process with a hearing and that the ignorance of the law is not an excuse as persons are expected to come in compliance with the different laws and that it has always been requested to register rental properties.

Mr. James Moreno asked staff what the City Assessors records show for 439 W. Columbia as its use. Mr. Dave Farmer stated the records show the property as "C-3 Intensive Business" now and that in the past it was as a residence; but had been stopped and used as a business only. Said when the residential use was stopped, you cannot go back to a residential use when it is zoned "C-3".

Mr. Moreno asked if there was anything in the records showing that it had been allowed to be changed from a single unit to a 2-unit family residential. Mr. Farmer said no; not in any of our city records; the Assessing department records for 1984-1993 show as being an office use.

Mr. Christian stated the basement level has never been used as an office. Said when he bought it about 42 years ago it had 2 residential units.

Mr. Farmer stated that it is not uncommon to inspect a property where the old Code Compliance had not enforced the zoning, then find now that persons have to change back to what the zoning allows currently as it had been changed illegally in the past and overlooked.

Mr. Christian asked how he can prove that it had been split into two-units legally.

Ms. Becky Squires stated they need to follow the legality and have documentation such as building permits or registered rental approvals in order to allow. Ignorance of the law is not a defense, and there has been many articles written in the newspaper about registering rental properties.

Mr. Christian stated he is aware of the rental ordinance for the City of Battle Creek and that he has many other rental properties. Said he purchased this property with tenants already living there and assumed it had been registered and never registered.

Mr. Greg Dunn asked that the documents provided to the board today be shared with staff and see if it can change their opinion.

Mr. Christian asked if the property had been registered when the township merged with the city; would he have been allowed to have the two rentals in a business district. Mr. Stetler said he was not sure what the laws were for rentals 40 years ago. Mr. Dunn asked if that was the reason he did not register them; having the fear of not being allowed. Mr. Christian said no.

Mr. Glenn Perian stated the documents provided today by Mr. Christian show it had been lived in as a rental, but not that it had been legal. Mr. Perian noted that when the city does the rental registration reviews they look at then and now and if in the past it had been legally changed there is a potential it would still allow; but there are no records to show it had been changed legally.

Mr. Christian stated he should have brought an attorney and asked if he can adjourn in order to have an attorney present; stated this property was bought for the intention of rental use and without them it would put a financial strain on him. Chairperson Mr. Stetler stated in regards to having an attorney present; that the decision can be appealed to circuit court.

Mr. Dunn stated there has been other persons come before them with similar cases where a property had been changed illegally and numerous persons have lived there; but that does not make it legal and without the documentation of permits etc. it makes it difficult to allow the use when it is not allowed by the zoning. Mr. Christian said how he can prove what happened 50 years ago when it was the Battle Creek Township.

Mr. Perian asked Ms. Steele to provide clarification of Mr. Christian's next steps and how to appeal their decision if denied. Ms. Steele stated Mr. Christian may appeal this decision today to Circuit Court, but can also have an option of applying for a Use Variance to the zoning board.

Chairperson, Mr. Stetler asked if there were any persons wishing to speak seeing none, he called this public hearing to a close and would entertain a motion.

MOTION WAS MADE BY MR. GREG DUNN TO SUPPORT AND UPHOLD THE DECISION OF THE CITY ZONING ADMINISTRATOR AS THEY ACTED PROPERLY IN DENYING A TWO-UNIT RESIDENTIAL USE IN A "C-3 INTENSIVE BUSINESS DISTRICT" ZONE FOR PROPERTY LOCATED AT 439 W. COLUMBIA AVENUE; SUPPORTED BY MS. BECKY SQUIRES.

Discussion:

Mr. Greg Dunn stated that when persons purchase a property they should check the zoning and what the allowed use is with the city.

Mr. John Stetler stated he believes this is a prime example that the ordinance is wrong and should allow this type of use in a commercial zoning; said this is not the issue of whether the ordinance is correct but if the staff findings are correct.

Mr. James Moreno stated this has been an issue before where the purchaser should do their due diligence of the property they are purchasing and check the zoning to make sure it is conforming to their intended use.

Mr. Rick Barnes asked if Mr. Christian is declined; can he still rent the space for office use. Mr. Perian stated, yes.

**MR. JOHN STETLER ASKED FOR ANY ADDITIONAL COMMENTS, SEEING NONE
A VOTE WAS TAKEN; ALL IN FAVOR; NONE OPPOSED, MOTION APPROVED TO
SUPPORT THE DECISION OF THE ZONING ADMINISTRATOR.**

NEW BUSINESS: None

APPROVAL OF MINUTES:

**MOTION: WAS MADE BY MR. JAMES MORENO TO APPROVE THE NOVEMBER
13, 2012 ZONING BOARD OF APPEALS MINUTES AS PRESENTED; SUPPORTED
BY MR. GREG DUNN.**

ALL IN FAVOR; NONE OPPOSED, MOTION CARRIED – MINUTES APPROVED.

COMMENTS BY THE PUBLIC: None

COMMENTS BY THE MEMBERS / STAFF:

Mr. Greg Dunn welcomed new zoning board members and noted the article in the newspaper regarding commission and board members that are appointed for the city residing being from one area of the city. Stated he feels they have good discussion and that it is not the case of geographic location of members being an issue and he takes offense to the statement made.

ADJOURNMENT: Meeting was adjourned at 4:47 P.M.

Submitted by: Leona A. Parrish
Administrative Assistant, Planning Department

2

7 Menno

447 Columbia

~~Susan Graves~~

MARSHO Pensen 68-71

SUSAN GRAVES

DAN SOULES ~~71-74~~

59-68

~~BE~~ 71-01

Aritha Pison

Emmy Nichols 01-04

68-82

One Color

JACK Coleman 2004

82 to Present

to presents

If the plan HAS A BUILDING CONTRACTOR
to view my building is obvious

these were constructed AS

3 separate APARTMENTS over 40 years ago

PLUMB

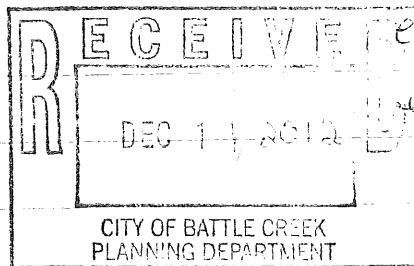
MENT

doors

windows

trim

1



PER Ltr 101 ARE ORIGINAL

except updated electrical by SIMMS electrical

CITY OF BATTLE CREEK

SPECIAL ASSESSMENT INSTALLMENT BILL

DUE DATE: 10/31/2012

ROLL NUMBER: J-008

PARCEL ID #: 6460-11-468-0

DESCRIPTION: COLUMBIA AVE

PARCEL LOCATION: 439 W COLUMBIA AVE

INSTALLMENT NUMBER: 5

6460114680J00800000000516.42SPEC

INTEREST RATE: 0.00

ITEM	AMOUNT
CURRENT YEAR PRINCIPAL INSTALLMENT	516.42
CURRENT YEAR INTEREST	0.00
	0.00
CURRENT YEAR INSTALLMENT DUE	516.42
PAYOFF AMOUNT	516.42
AMOUNT PAID	

*PLAN
COMMISSIONER*

THE FOLLOWING INSTALLMENT IS DUE AND PAYABLE ON OR BEFORE OCTOBER 31, 2012. ANY UNPAID INSTALLMENT IS SUBJECT TO 6% LATE FEE AND WILL BE PLACED ON THE 2013 SUMMER TAX BILL. WHEN MAKING PAYMENT PLEASE ENCLOSE THE BOTTOM PORTION OF THE BILL. FOR A RETURN RECEIPT PLEASE ENCLOSE THE ENTIRE BILL AND A SELF-ADDRESSED STAMPED ENVELOPE.

IF YOU WISH TO PAY THE ASSESSMENT IN FULL PLEASE SEND PAYMENT FOR THE "PAYOFF AMOUNT" SHOWN ON THE BILL.

SHOULD YOU HAVE ANY QUESTIONS, PLEASE FEEL FREE TO CONTACT THE TREASURER'S OFFICE AT 269-966-3325.

PLEASE REMIT BOTTOM PORTION WITH YOUR PAYMENT

DUE DATE: 10/31/2012

DESCRIPTION: COLUMBIA AVE
ROLL NUMBER: J-008
PARCEL ID #: 439 W COLUMBIA AVE

MAKE CHECKS PAYABLE TO:

BATTLE CREEK CITY TREASURER

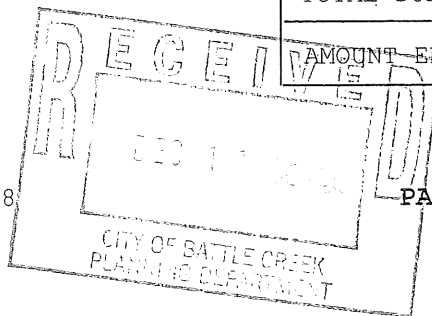
PO BOX 1717
BATTLE CREEK, MI 49016-1717

CURRENT YEAR PRINCIPAL	516.42
CURRENT YEAR INTEREST	0.00
	0.00
TOTAL DUE	516.42
AMOUNT ENCLOSED	

To:


R B CHRISTIAN & SON INC
439 W COLUMBIA AVE
BATTLE CREEK MI 49015-3398

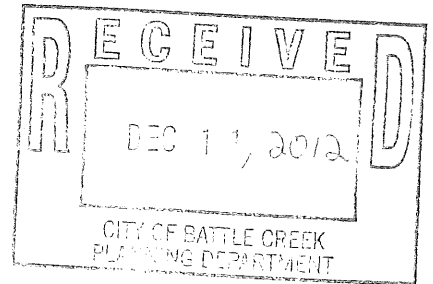
PARCEL ID # 6460-11-468-0



SWORN STATEMENT

I Richard Christian do so state that the rental units at 447 W. Columbia Ave. and 7 Menno Place have at all times been in use since 1971 as rental units.

X 
Richard Christain

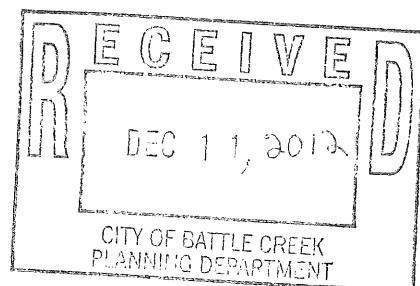


SWORN STATEMENT


I David Colles have lived at 7 Menno Place, Battle Creek from 1982 to present

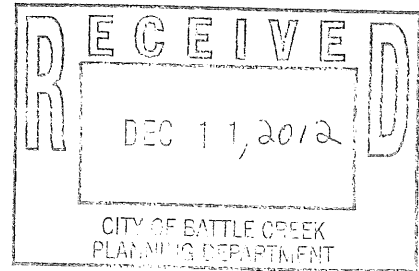
x David Colles

David Colles



I Linda Robbins have collected the rents for 7 Menno Place and 447 W. Columbia Ave. Battle Creek, MI since 1985, rental units are rented month to month, no leases exist. At no time have either of these units been vacant.


Linda Robbins



SWORN STATEMENT

I Jack Coleman have lived at 447 W. Columbia Ave. Battle Creek from August 2004 to present.

X Jack Coleman
Jack Coleman

